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Services, Inc. and HCRE Partners, LLC*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	<b>Case No. 19-34054-SGJ-11</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	

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<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff.</b>	§	
	§	
<b>v.</b>	§	
	§	<b>Adversary No.: 21-03006-sgj</b>
<b>HIGHLAND CAPITAL MANAGEMENT</b>	§	
<b>SERVICES, INC., JAMES DONDERO,</b>	§	
<b>NANCY DONDERO, AND THE DUGABOY</b>	§	
<b>INVESTMENT TRUST,</b>	§	
	§	
<b>Defendants.</b>	§	

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<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff.</b>	§	
	§	
<b>v.</b>	§	
	§	<b>Adversary No.: 21-03007-sgj</b>
<b>HCRE PARTNERS, LLC (n/k/a NEXPOINT</b>	§	
<b>REAL ESTATE PARTNERS, LLC), JAMES</b>	§	
<b>DONDERO, NANCY DONDERO, AND</b>	§	
<b>DUGABOY INVESTMENT TRUST</b>	§	
	§	
<b>Defendants.</b>	§	

**DECLARATION OF MICHAEL P. AIGEN IN SUPPORT OF  
MOTION TO EXTEND EXPERT DISCLOSURE AND DISCOVERY DEADLINES**

I, Michael P. Aigen, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. I am a member of the law firm of Stinson LLP, counsel to Highland Capital Management Services, Inc. (“HCMS”) and HCRE Partners, LLC (“HCRE”), and I submit this Declaration in support of the *Motion to Extend Expert Disclosure and Discovery Deadlines*, filed on October 29, 2021. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit 1** is a true and correct copy of excerpts of the Transcript of the October 29, 2021 Remote Videotaped Deposition of James Dondero, Volume 2, at 335:19-336:13, 338:11-339:18, 371:5-9, and 381:10-23.

Dated: December 8, 2021.

/s/ Michael P. Aigen  
Michael P. Aigen

# **Exhibit 1**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

HIGHLAND CAPITAL Chapter 11  
MANAGEMENT, L.P., CASE NO.  
19-34054-SGI11

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs. Adversary  
Proceeding No.  
JAMES D. DONDERO, 21-03003-sgi

Defendant.

REMOTE VIDEOTAPED DEPOSITION OF

JAMES DONDERO - VOLUME 2

October 29, 2021

Reported by: Susan S. Klinger, RMR-CRR, CSR

Job No. 201874

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October 29, 2021

10:21 a.m.

Remote Deposition of JAMES DONDERO, held  
before Susan S. Klinger, a Registered Merit  
Reporter and Certified Realtime Reporter of the  
State of Texas.

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A P P E A R A N C E S:

(All appearances via Zoom.)

Attorneys for the Reorganized Highland Capital  
Management:

John Morris, Esq.

Hayley Winograd, Esq.

Gregory Demo, Esq.

PACHULSKI STANG ZIEHL & JONES

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New York, New York 10017

Attorneys for NexPoint Advisors, LP and  
Highland Capital Management Fund Advisors,  
L.P.:

Davor Rukavina, Esq.

Thomas Berghman, Esq.

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complete answer regarding a myriad of ways you've asked me kind of the same structural questions.

Q. I am, and just to be clear, I'm asking kind of the same structural questions with respect to each of the entities at issue. I think you picked up on that. I hope you don't think I'm being repetitive.

You mentioned Frank and his group in the context of HCMS. Did I hear that correctly?

A. Yes.

Q. Okay. HCMS did not have a shared services agreement with Highland; correct?

MS. DEITSCH-PEREZ: You mean a written shared services agreement, John?

Q. Do you understand the question, sir?

A. Yeah. My answer would be the advisors like NexPoint and HFAM that had to have by law and regulatory statute have to have formal sub advisors and shared services agreements had formal shared services agreement.

Entities that didn't need to have

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formal written shared services agreements were often serviced similarly or -- or exactly the same as those entities, but without a written agreement, but with a verbal shared services agreement providing, again, all the same similar services.

And the entities that didn't have a written shared services agreement weren't getting shared services or support from any other entities other than Highland doing the same thing for them that it did for the mutual funds.

Q. Okay. Can you tell me who entered into an oral shared services agreement between Highland and HCMS?

A. Boy, I can imagine way back in the day it would have been myself and Frank, but he and his group understood and knew that they were doing it for all the new entities that came along, and I can't imagine it was even talked about much over the years.

Q. Did -- did HCMFA and NexPoint pay money to Highland under the shared services agreement until let's just say late 2020?



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2 the Highland entity.

3 And then -- and they prepared  
4 statements or did work for services, Frank and  
5 his group would have passed through those costs  
6 and expected services and/or Dugaboy or any of  
7 the other entities to pay for direct  
8 out-of-pocket costs. But it wouldn't have paid  
9 a supplemental fee or profit or anything to  
10 Highland.

11 Q. Okay. To the best of your  
12 recollection, during the time that you were  
13 president of Highland, did Highland ever  
14 receive anything of value from HCMS on account  
15 of services other than the reimbursement of  
16 out-of-pocket expenses?

17 A. Yeah, I'm going to go back to my  
18 comment in terms of building track record. And  
19 I would use -- yeah, we had done it several  
20 times in the past and it had worked  
21 effectively. And that is -- you know, yeah, I  
22 mean, the -- the track record in CLO paper was  
23 what was used to track -- (inaudible) -- as an  
24 investor.

25 And so, you know, to the extent that

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the DAF wasn't paying a fee, along the way, to Highland for shared services, Highland got the benefit of the track record that was being built at the DAF to then market to third parties, which then created a revenue stream for Highland down the road.

And I would say that was the same intent on Services.

Q. Is there anything -- anything else of value that you believe HCMS provided to Highland in exchange for the services that Highland rendered?

A. That would be primarily it. I would say there is probably times where Services provided liquidity for Highland or helped on investments that Highland was involved in, but I would have to refresh myself on exactly what.

Q. Is it fair to say that HCMF -- HCMS never provided a revenue stream to Highland similar to the revenue stream that was provided by HCMFA and NexPoint under the shared services agreements?

A. That is correct.

Q. Okay. Did anybody at HCMF --

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to the extent that there was a screw-up, on the term loans.

Q. What screw-up are you referring to?

A. Well, we didn't have accountants or employees at Services, you know, and Services was relying on Highland and shared services to stay in compliance or to -- on the various loans.

Q. Did you ever personally instruct anybody in December of 2020 to make a payment on behalf of HCMS under the term note?

A. To make -- I'm sorry, is this -- what was the timeframe again?

Q. December 2020 -- let's just say anytime in 2020. Did you, in your capacity as the person in control of HCMS, ever direct or authorize any person in the world to make a payment from HCMS to Highland in satisfaction of the obligation that was due under the term note at the end of the year?

A. Not that -- not that I recall.

Q. Okay. Do you know whether anybody acting on behalf of HCMS ever instructed or authorized Highland to make a payment on

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the screen on if you want so that we can  
get back fast.

MR. MORRIS: My pleasure, Deborah.  
No problem.

MS. DEITSCH-PEREZ: Thank you.

VIDEOGRAPHER: Off the record,  
12:40.

(Recess taken 12:40 p.m. to 12:51 p.m.)

Q. Before we go on to this document,  
sir, did HCRE have a shared services agreement  
with Highland?

VIDEOGRAPHER: We're back on the  
record.

MR. MORRIS: Oh, do I need to read  
the question again?

COURT REPORTER: No, I've got it.

A. I -- I don't believe it is a formal  
written one. I think it is just a verbal one.

Q. And who is the verbal agreement  
between?

A. It was between Highland and HCRE.  
Now it is between NexPoint and HCRE.

Q. And who entered into the agreement  
between Highland and HCRE?

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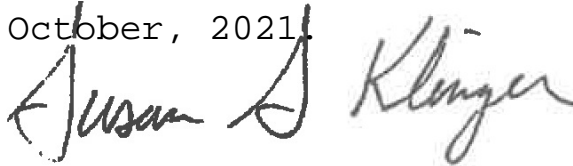
C E R T I F I C A T E

I, SUSAN S. KLINGER, a certified shorthand reporter within and for the State of Texas, do hereby certify:

That JAMES DONDERO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th of October, 2021.

A handwritten signature in cursive script, reading "Susan S. Klinger", written in black ink. The signature is positioned above a horizontal line.

Susan S. Klinger, RMR-CRR, CSR  
Texas CSR# 6531